

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1230 of 1997

in

SPECIAL CIVIL APPLICATION No. 2040 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER  
and  
MISS JUSTICE R.M. DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 : NO

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HJ JOSEPH

Versus

KANDLA PORT TRUST  
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Appearance:

MR DIPAK R DAVE for Petitioner  
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CORAM : MR.JUSTICE C.K.THAKKER and  
MISS JUSTICE R.M.DOSHIT  
Date of decision: 06/10/97

ORAL JUDGEMENT {Per : Thakkar, J.}

This Letters Patent Appeal is filed against an order passed by the learned Single Judge in Special Civil Application No. 2040 of 1997, decided on August 6, 1997. The learned Single Judge has not entertained the petition mainly on the ground that a Civil Suit is pending. In our opinion, the said ground cannot be said to be irrelevant and/or non material. The learned counsel for appellant, no doubt, stated that Suit is not maintainable and that he is prepared to withdraw the suit. The question, in our opinion, however is as to whether the order passed by the learned Single Judge can be said to be vulnerable ? When a proceeding is pending and the learned Single Judge did not entertain the petition on the ground that two parallel proceedings may not go on, the said ground cannot be said to be irrelevant which is required to be quashed and/or the order passed by the learned Single Judge on that basis is wrong Hence, we do not entertain the said argument.

In the facts and circumstances, Letters Patent Appeal deserves to be dismissed, and is accordingly dismissed. It is, however, made clear that when the learned Single Judge did not entertain a petition, and we are also not entertaining the Letters Patent Appeal, all the observations made by us as well as by the learned Single Judge must be understood as if the High Court had not invoked extra-ordinary jurisdiction under Article 226 of the Constitution of India. In the light of above, Letters Patent appeal is dismissed with no order as to costs.

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Prakash\*  
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